IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 205 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
MANGALDAS MOHANLAL DATANI SELLER AND OWNER & 1 - Respondent(s)

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Appearance :
MR MA PATEL APP for Applicant(s) : 1,
MR DK MODI for Respondent(s) : 1 - 2.
MR MD MODI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 05/07/2007

ORAL JUDGMENT

1. This Criminal Revision Application filed under Section-397 read with Section 401 of the Criminal Procedure Code (on conversion from Criminal Appeal No.466 of 2000 as per order dated 25.4.2001) has been preferred by the State of Gujarat challenging the judgment and order dated 18.10.1999 passed by the learned Judicial Magistrate, First Class, Jamkhambhaliya, in Criminal Case No.497 of 1998, whereby the learned Magistrate acquitted the respondents of the offences punishable under Section 16, read with Section 7 (ii) of the Prevention of Food Adulteration Act, 1954.

2. Short facts leading to the filing of the present Revision Application are that the complainant- Food Inspector filed complaint against the present respondent for offences punishable under Section 16 of the Prevention of Corruption Act, 1954 (for short 'the Act') for contravention of Section 2 (9) (k), Rule 32 (e) and 7(ii) of the Prevention of Food Adulteration Rules, 1955 (for short 'the Rules'), in the Court of learned Judicial Magistrate, First Class, Jamkhambhaliya.

3. The case of the original complainant Food Inspector Mr. A.B.Moghul before the trial Court was that he had visited the shop of M/s.Mangaldas Mohan on 17.1.1996 where he met one Mr. Ajij Ishaq Kanan. Thereafter, he introduced himself and on inspection of the food articles from his shop, he purchased a packet of biscuit in the brandname “Sunil Binki” as samples by paying Rs.42/- to the present respondent – accused. After completing all the necessary formalities as required under law, and after issuing notice, the Food

Inspector had prepared 3 samples of the said biscuit, one sample packet was sent to the Public Analyst, Rajkot while the two other sample packets were forwarded to the Local Health Authority properly packed and sealed. Upon receipt of the report from the Public Analyst, it was found that these samples of "Sunil Binki" biscuits did not bear Batch number, lot number and Code number and were declared misbranded. Thereafter, consent was taken from the concerned authority and complaint was filed against the respondents for the aforesaid offence which came be to registered. Before the learned Magistrate, the present respondents appeared and the learned Magistrate recorded the evidence of Mr. A.B. Gelani, Food Inspector so as to decide whether a case is made out for framing of the charge against the present respondents. It was noticed that since the Food Inspector Mr. A.B. Moghal , who had initially inspected the shop of the present respondent had expired and hence, Mr. A.B. Gelani, Food Inspector had given his evidence.

4. After hearing the arguments of the learned Counsel for the parties, the learned Magistrate has come to the conclusion that no case was made out for framing of the charge against the respondents-accused, and therefore, passed the judgment and order of acquittal as stated in paragraph 1 of this judgment, which is the subject matter of challenge in the present Revision Application.

5. Heard learned A.P.P. Mr. M.A. Patel for the applicant-State of Gujarat and Mr. D.K. Modi, learned advocate for the respondents.

6. The learned A.P.P. contended that there was sufficient material before the trail Court, however, the trial Court has ignored the same and therefore, there is patent illegality in acquitting the present respondents. According to the learned A.P.P., the judgment and order of the trial Court deserves to be set aside and as such the appeal be allowed.

7. On other hand, learned Counsel for the respondents has submitted that learned trial Court was perfectly justified in passing the order acquitting the respondents of the charges levelled against them.

8. Now, in the instant case, admittedly, the Food Inspector, Mr. A.B. Moghul, who had collected the samples in question and forwarded the same to the Public Analyst as aLsO to the Local Health Authority could not be examined by the trial Court as he had passed away. The trial Court had, therefore, examined his successor in office i.e. Food Inspector, Mr. A.B. Gelani, however, this Food Inspector was not a witness to the collecting and forwarding of samples undertaken by late Mr. A.B. Moghul, Food Inspector. Therefore, the evidence of Mr. A.B. Gelani has to be thrown out of consideration.

9. It is settled law that certain mandatory provisions under Section 11 of the Prevention of Food Adulteration Act, 1954 are required to be followed by the Food Inspector at the time of collecting samples and since the Food Inspector had passed away and also since Mr. A.B. Gelani was not present at the time of collecting samples, the evidence on the point whether the samples

were collected by late Mr. A.B. Moghul in the manner described and prescribed under law is not available on the record of the case. Again, Rule 9 of the Prevention of Food Adulteration Rules, 1955 has to be seen. Rule 15 lays down the procedure to be followed for labelling and addressing of the sample packets. Rule 16 provides for the manner of packing and sealing of samples. Rule 17 provides for the manner of despatching the samples. On all these material aspects the evidence is lacking in the present case since the Food Inspector, who had collected and forwarded the samples to the concerned authorities had passed away.

10. In that view of the matter, there being no illegality or perversity committed by the learned Magistrate in passing the order acquitting the respondents, this Criminal Revision Application fails and is hereby dismissed. The judgment and order dated 18.10.1999 passed by the learned Judicial Magistrate, First Class, Jamkhambhaliya, in Criminal Case No.497 of 1998 is hereby confirmed. Rule is discharged.

(M.D. SHAH, J.)

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